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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/516,663

11/30/2004

Martinus Johannes Warmerdam

GRT/4662-371

8767

23117 7590 11/21/2008
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EXAMINER

WONG, LESLIE A

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

11/21/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/516,663	Applicant(s) WARMERDAM ET AL.	
	Examiner Leslie Wong	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>9/11/08</u> . | 6) <input type="checkbox"/> Other: _____ |

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 11, 2008 has been entered.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Suloff, Isom et al (EP 1174039) and Ang (EP 1068809) in view of Noordam et al (US 5552151), De Haan et al (EP 0867124), and Schuppiser et al (US 5446014) for the reasons set forth in rejecting the claims in the last Office action. The amendments to the claims are not seen to influence the conclusion of unpatentability previously set forth..

Suloff discloses a method for preventing nozzle clogging during spraying of shredded cheese with an aqueous composition comprising natamycin to protect against fungal spoilage, wherein shredded cheese is tumbled with an anti-caking agent and

Art Unit: 1794

sprayed with natamycin (see entire document, for example page 83, Sample Production).

Isom et al (EP 1174039) disclose a conventional cheese process where the cheese is coated with an anti-caking agent (e.g. cellulose) and natamycin (see entire document, especially Figure 1, paragraph 0004, and claims 8 and 9).

Ang (EP 1068809) discloses treating cheese (e.g. shredded) with natamycin and an anti-caking agent such as cellulose, microcrystalline cellulose, starches and combinations thereof (see entire document, especially paragraphs 0027-0029, and 0037)

The claims differ as to the use of a thickening agent and the specific recitation of nozzle clog prevention.

Noordam et al (US 5552151) disclose stable natamycin compositions for application to cheese comprising natamycin and xanthan as a thickening agent (see entire patent, especially claims 1, 4, and 6).

De Haan et al (EP 0867124) disclose an anti-fungal composition for application to cheese comprising natamycin and xanthan (see entire document, especially page 3, lines 20-29).

Schuppiser et al (US 5446014) disclose the use of xanthan gum to provide a precipitate-free composition to prevent nozzle clogging during agricultural treatment (see entire document, especially claim 1).

It would have been obvious to a person of ordinary skill in the art, at the time the invention was made, to use xanthan as a thickening agent in combination with

Art Unit: 1794

natamycin as taught by Suloff, Noordam et al (US 5552151) and De Haan et al (EP 0867124) in that of Isom et al (EP 1174039) and Ang (EP 1068809) because xanthan serves to improve the stability of a natamycin composition, and xanthan serves to prevent nozzle clogging.

Applicant's arguments filed August 15, 2008 have been fully considered but they are not persuasive.

Applicant argues that the prior art does not teach the prevention of nozzle clogging using an aqueous composition containing natamycin and a thickening agent. Applicant argues that the art is non-analogous and that hindsight reasoning is employed

All of the claimed components and process steps are taught by the prior art. The treatment of shredded cheese with an anti-caking agent, the treatment of shredded cheese with natamycin, the use of an aqueous composition, and the use of xanthan to prevent nozzle clogging is taught by the prior art. Applicant is using known components and process steps to obtain no more than expected results.

In response to applicant's argument that the art is nonanalogous, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Schuppiser et al is directed to the treatment of agricultural products, wherein Applicant discloses food, feed, and agricultural products.

Art Unit: 1794

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leslie Wong whose telephone number is (571)272-1411. The examiner can normally be reached on Tuesday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1794

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Leslie Wong/
Primary Examiner, Art Unit 1794

LAW
November 20, 2008